| **Goodwin v Columbia Univ.** |
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| 2020 NY Slip Op 32179(U) |
| July 7, 2020 |
| Supreme Court, New York County |
| Docket Number: 152204/2017 |
| Judge: W. Franc Perry |
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# SUPREME COURT OF THE STATE OF NEW YORK
# NEW YORK COUNTY

**PRESENT:** **HON. W. FRANC PERRY** **PART** **IAS MOTION 23EFM**

***Justice***

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ROBERT GOODWIN,

Plaintiff,

- v -

COLUMBIA UNIVERSITY, THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, LEND LEASE (US) CONSTRUCTION INC.

Defendant.

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**INDEX NO.** 152204/2017

**MOTION DATE** 01/23/2020

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38

were read on this motion to/for JUDGMENT - SUMMARY .

In this labor law action, defendants Columbia University, the Trustees of Columbia University in the City of New York, ("Columbia" and/or "defendants") and Lend Lease (US) Construction Inc. ("Lend Lease" and/or "defendants") seek an order pursuant to CPLR §3212 granting defendants summary judgment dismissing the plaintiff's cause of action pursuant to Labor Law § 240(1) because the plaintiff did not fall from one level to another; and granting Columbia summary judgment dismissing the plaintiff's causes of action pursuant to Labor Law § 200 and common law negligence because Columbia did not supervise, direct or control the means and methods of the work and did not have notice of a dangerous condition. Plaintiff opposes the motion.[1]

[1] Plaintiff concedes that defendants are entitled to summary judgment with respect to the claims asserted pursuant to Labor Law § 240(1), noting that based on the testimony of the witnesses and the document discovery exchanged in this action, plaintiff does not have a viable Labor Law § 240(1) claim. (NYSCEF Doc. No. 36, ¶2). Accordingly, this portion of defendants' motion is granted on consent and defendants are granted summary judgment dismissing plaintiff's Labor Law § 240(1) claim.

**BACKGROUND/CONTENTIONS**

This action arises out of a construction project to expand Columbia University's campus for its Manhattanville in West Harlem Development Project ("the Manhattanville Project"), with the construction of a new science building, the Mind Brain Behavior Building. In 2007 Columbia hired Lend Lease as the project manager and entered into a Construction Manager Agreement; thereafter, in 2012, Lend Lease hired Universal Builders Supply, Inc. ("UBS"), to install a platform scaffold and stair tower in the lobby of the Mind Brain Behavior Building. (NYSCEF Doc. No. 30 at ¶¶6, 9 and Doc. Nos. 31 and 33). In 2013, Lend Lease hired Forest Electric Corp. ("Forest"), plaintiff's employer, to perform the electrical fit out scope of work in the Mind Brain Behavior Building. (Id. at ¶8, and Doc. No. 32).

At his deposition, plaintiff testified that on November 9, 2015 he was an electrician employed by Forest, and on that date, he and a coworker were directed by Forest foreman Pete Rose to install runs of pipe in the ceiling of the lobby of the Mind Brain Building under construction, using a platform scaffold to access the ceiling. (NYSCEF Doc. No. 27 at pp. 37-40). According to the plaintiff, the only way to access the platform scaffold was by means of an abutting stair tower. (Id. at pp.44, 55-56).

Plaintiff testified that the stair tower was equipped with permanent railings. (NYSCEF Doc. No. 27 at p. 46). At the top of the stair tower, on each side of the stairway, were additional handrails connecting the stair tower's permanent railings to the scaffold railing. (Id. at pp. 46, 58-59). The plaintiff described the handrails between the stair tower and the platform scaffold as four-to five-foot long steel tubing between ½" and ¾" thick, connected at each end with tie wire. (Id. at pp. 57- 59). Plaintiff testified that prior to his fall, his coworker went "up and down a few times" gathering material that was needed from the floor to be brought up to the platform

scaffold. (Id. at pp. 47-48). Plaintiff testified that he told his coworker that he would go down and hand the pipe materials to him “so you don't have to keep getting on and off this one-man lift, which is kind of tight to squeeze in and out, so that's when I went to descend the stairs.” (Id. at p. 48).

Plaintiff indicated that there was a gap at the top of the staircase and a railing going across, around three and-a-half to four feet high that he had to duck under to descend. (NYSCEF Doc. No. 27 at p. 49). He testified that he reached and noticed the makeshift railing that he grabbed onto and then reached with his left foot over the gap space so that his foot would land onto the first step. (Id. at pp. 57-59). Plaintiff testified that all his weight shifted onto his left hand that was holding onto the makeshift railing and that as he moved his left foot, the railing “gave way” and “came undone” causing him to fall. (Id.).

Columbia submits the affidavit of Gary Brown, its Senior Project Manager, in support of summary judgment. Brown indicates that his statements are based on his personal knowledge, his work experience with Columbia and his review of business records created and maintained by Columbia. Brown states that he was hired by Columbia as a Project Manager in April 2001 and in 2008 was assigned to the Mind Brain Behavior Building. (NYSCEF Doc. No. 30 at ¶¶3,4). In 2014, Brown became the Senior Project Manager and he managed the progress and the budget of the Mind Brain Behavior Building component of the Manhattanville Project. (Id. at ¶4).

Mr. Brown states that he has been informed that plaintiff has alleged injuries resulting from a fall when he was exiting the platform scaffold onto the stair tower. Mr. Brown states that in 2013, defendant Lend Lease entered into a subcontract with plaintiff’s employer Forest, to perform the electrical fit out scope of work in the Mind Brain Behavior Building. (NYSCEF

Doc. No. 32). Additionally, Mr. Brown states that the platform scaffold and stair tower in the Mind Brain Behavior Building, was installed in 2012, pursuant to a subcontract entered into by Lend Lease and UBS. (NYSCEF Doc. No. 30 at ¶9 and Doc. No. 33).

Mr. Brown also provides a summary of plaintiff's deposition testimony describing his fall, noting specifically; "the plaintiff crouched down or otherwise maneuvered his body under the platform and over the toe board; that the handrails between the platform scaffold and the stair tower were affixed with tie wire; that, as he was exiting the platform scaffold onto the stair tower, the plaintiff placed his weight on one of the handrails between the platform scaffold and the stair tower; that the handrail gave way; and that the plaintiff fell . . .." (NYSCEF Doc. No. 30 at ¶11).

Mr. Brown states that Columbia did not supervise, direct or control the means and methods of plaintiff's work, or the work of his employer Forest, or the work of UBS, including its installation of the platform scaffold and stair tower. (NYSCEF Doc. No. 30 at ¶¶12-13). Finally, Mr. Brown provides that Columbia did not inspect the platform scaffold and stair tower nor did it have actual or constructive notice of the conditions of the platform scaffold and stair tower, involved in plaintiff's accident. (Id. at ¶¶14-15).

As noted, in opposition to defendants' motion, plaintiff concedes that his claims asserted pursuant to Labor Law §240 (1) should be dismissed however, he contends that his claims pursuant to Labor Law §200 and common law negligence survive summary judgment, notwithstanding the Brown affidavit, because defendants have not provided this court with any evidence to establish that Columbia did not have actual or constructive notice of any unsafe conditions where plaintiff's accident occurred.

**STANDARD OF REVIEW/ANALYSIS**

"The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact . . .." *Winegrad v New York Univ. Med. Ctr*., 64 NY2d 851, 853 (1985). The burden then shifts to the motion's opponent to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact." *Mazurek v Metro. Museum of Art*, 27 AD3d 227, 228 (1st Dept 2006).

Labor Law § 200 (1) states, in pertinent part, as follows:

> [a]ll places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places. All machinery, equipment, and devices in such places shall be so placed, operated, guarded, and lighted as to provide reasonable and adequate protection to all such persons. . .

"Liability pursuant to Labor Law § 200 may be based either upon the manner in which the work is performed or actual or constructive notice of a dangerous condition inherent in the premises." *Markey v C.F.M.M. Owners Corp.*, 51 AD3d 734, 736 (2d Dept 2008). In order for an owner or general contractor to be liable for common-law negligence or a violation of Labor Law § 200 for claims involving the manner in which the work is performed, it must be shown that the defendant had the authority to supervise or control the performance of the work.

For claims that arise out of an alleged dangerous premises condition, it must be demonstrated that an owner or general contractor had control over the work site and either created the dangerous condition causing an injury, or did not remedy the dangerous or defective condition, while having actual or constructive notice of it. *See Abelleira v City of New York*, 120 AD3d 1163, 1164-1165 (2d Dept 2014); *Foley v. Consolidated Edison Co. of NY,* 84 AD3d 476, 923 NYS2d 57 (1st Dept 2011) (Con Edison not liable under Labor Law § 200 and common law

negligence where subcontractor supplied a saw that failed and Con Edison did not control the means and methods of plaintiff's work, because it "had no control over the equipment used by the plaintiff to enable it to avoid or correct the alleged unsafe condition of the saw"); *Willis* v. *Plaza Constr. Corp.,* 151 AD3d 568, 54 NYS3d 281 (1st Dept 2017) (Defendants not liable under Labor Law § 200 and common law negligence to plaintiff injured by a bursting hose pouring cement where they did not supervise or control the manner of plaintiff's work).

Columbia defendants contend that they did not have any notice of defective or hazardous conditions, nor did they have any control over the injury producing work. The defendants maintain that Columbia neither created, designed nor installed the platform scaffold and stair tower structure, and that the structure was installed by UBS pursuant to a subcontract with Lend Lease. (NYSCEF Doc. No. 33). In support of its contention that it neither supervised nor controlled the means and methods of plaintiff's work or the activity which gave rise to the injuries alleged, defendants submit the Brown affidavit and the contracts and documents reviewed by Mr. Brown, which plainly provide that Columbia did not supervise or control the workplace nor did it inspect the platform scaffold and stair tower.

Plaintiff does not submit his own expert affidavit to refute Brown's statements that the Columbia defendants did not have notice of the alleged condition, nor did they supervise or have any control over the injury producing work. Rather, in opposition, plaintiff simply concludes that the Brown affidavit is "worthless" and that defendants have failed to sustain their burden in seeking summary dismissal.

Plaintiff fails to meet his burden and present evidentiary facts in admissible form which demonstrates that the Columbia defendants created a dangerous condition or had constructive or actual notice of such condition. Therefore, plaintiff's complaint alleging a violation of Labor Law

§ 200 and common law negligence must be dismissed as against Columbia. Indeed, the Brown affidavit establishes that Columbia did not inspect the platform scaffold or stair tower and as such, did not have and could not have had notice of any dangerous condition at the stair tower. Columbia's motion for summary judgment seeking dismissal of plaintiff's Labor Law § 200 and common law negligence claims is granted. Accordingly, it is hereby

ORDERED that defendant Lend Lease (US) Construction Inc., is granted summary judgment summary judgment dismissing the plaintiff's cause of action pursuant to Labor Law § 240(1), and the remaining claims asserted in the complaint against defendant Lend Lease (US) Construction Inc., are severed and the balance of the action shall continue; and it is further

ORDERED that the motion for summary judgment of defendants Columbia University, the Trustees of Columbia University in the City of New York, is granted and the complaint is dismissed against them; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendants Columbia University, the Trustees of Columbia University in the City of New York, dismissing the claims made against them in this action, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

Any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the Court.

**7/7/2020**
**DATE**

**W. FRANC PERRY, J.S.C.**

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| **CHECK ONE:** | [ ] **CASE DISPOSED** | | [X] **NON-FINAL DISPOSITION** | | | |
| | [X] **GRANTED** | [ ] **DENIED** | [ ] **GRANTED IN PART** | | [ ] **OTHER** | |
| **APPLICATION:** | [ ] **SETTLE ORDER** | | [ ] **SUBMIT ORDER** | | | |
| **CHECK IF APPROPRIATE:** | [ ] **INCLUDES TRANSFER/REASSIGN** | | [ ] **FIDUCIARY APPOINTMENT** | | [ ] **REFERENCE** | |